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HEALTH SYSTEM LAW AND POLICY CASES AND MATERIALS

VOLUME I

Colleen M. Flood

2002- 2003

Faculty of Law

University of Toronto

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HEALTH SYSTEM LAW AND POLICY

[LAW 404HS]

2002/2003

Tuesday: 4:10-6:00 pm

COURSE OUTLINE

January 7th

INTRODUCTION

- Expectations regarding seminar participation
- Paper selection and writing
- Handout of possible paper topics
- Discussion of an interdisciplinary approach to policy analysis: law, economics, and political science
- Overview of the course

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VOLUME ONE

January 14th

Chapter One

THE CASE FOR GOVERNMENT INTERVENTION IN HEALTH CARE: MARKET FAILURE AND DISTRIBUTIVE JUSTICE

C. M. Flood, "Chapter 2: Arguments in Economics and Justice for Government Intervention in Health Insurance and Health Service Markets" in C. M. Flood, *International Health Care Reform: A Legal, Economic and Political Analysis* (Routledge: London, 2000).....HANDOUT

T. Menzel, "Equality, Autonomy and Efficiency: What Health Care System Should We Have?" (1992)
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Allen E. Buchanan, The Right to a Decent Minimum Of Health Care, 13 Phil. & Pub. Aff. 55 (1984).....HANDOUT

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- T. Rice, "Can Markets Give Us The Health System We Want?" (1997) 22(2) Jnl. of Health Politics, Policy and Law 383.
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- S. Rathgeb Smith and M. Lipsky, "Privatization in Health and Human Services: A Critique" (1992) 17 (2) Jnl. of Health Politics, Policy and Law 233.
- R. G. Evans, "Going for the Gold: The Redistributive Agenda Behind Market-Based Health Care Reform" (1997) 22 (2) Jnl. of Health Politics, Policy and Law 427

January 21st

Chapter Two

AN OVERVIEW OF THE CANADIAN HEALTH CARE SYSTEM: DO WE NEED MORE THAN JUST MONEY?

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C.M. Flood and T. Archibald, "The Illegality of Private Health Care in Canada" (2001) 164(6) Can Med Assoc Jnl 825-830

C. David Naylor, "Health Care in Canada: Incrementalism Under Fiscal Duress" (1999) 18: 3 Health Affairs 9.

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Chapter Three

REFORMING THE CANADA HEALTH ACT AND IMPROVING ACCOUNTABILITY

The *Canada Health Act*, S.C. 1984, c. 6.....III, 1-14

Colleen M. Flood & Sujit Choudhry, *Strengthening the Foundations: Modernizing the Canada Health Act*, Discussion Paper No. 13, Commission on the Future of Health Care in Canada.....III, 15-59

Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada*, Final Report, November 2002, Chapter 2, “Health Care, Citizenship and Federalism”.....III, 60-88

The Senate, Standing Senate Committee on Social Affairs, Science and Technology, *The Health of Canadians – The Federal Role, Volume Six: Recommendations for Reform*, Part I, Accountability, Part III, Health Care Guarantee.....III, 89-130

February 7th

Chapter Four

THE MEDICARE BASKET: HOW DO WE DECIDE WHAT TO PUBLICLY FUND?

D. Callahan, “What is a Reasonable Demand on Health Care Resources: Designing a Basic Package of Benefits” (1992) 8 *The Jnl. of Contemporary Health Law* 1....IV, 1-15

Jacobs, Marmor and Oberlander, “The Oregon Health Plan and the Political Paradox of Rationing”(1999) 24: 1 *Jnl of Health Politics Policy and Law* 161.....IV, 16-27

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February 11th

Chapter Five

ADMINISTRATIVE LAW CHALLENGES TO RATIONING HEALTH CARE

Health Insurance Act R.S.O. H.6, ss. 20-21.V, 1-2

Health Insurance Act – General Regulation, R.R.O. 1990, Reg. 552, s. 28.5.....V, 3-4

C. Abraham, “Tenacious woman scores medical victory,”
Globe and Mail, Fri., Aug. 27, 1999.....V, 5-6

Stein v. Québec (Regie de l'Assurance-maladie), [1999] Q.J. No. 2724.....V, 7-16

R v. Cambridge District Health Authority ex parte B.
[1995] 1 FLR 1055.....V, 17-25

Shortland v. Northland Health Ltd [1998] 1 NZLR 433.....V, 26-39

NO CLASSES—READING WEEK – February 17-21

February 25th

Chapter Six

CHARTER AND CONSTITUTIONAL CHALLENGES TO RATIONING HEALTH CARE IN CANADA

Cameron v. Nova Scotia (Attorney General),
[1999] 177 DLR (4th) 611 (edited).....VI, 1-30

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(Minister of Health)*, [2000] B.C.J. No. 1547 (edited).....VI, 31-47

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Timely Access to Health Care for Canadians*, C.D. Howe Institute Commentary, No. 164,
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Chapter Seven

ABORIGINAL HEALTH & THE DETERMINANTS OF HEALTH

The Problems:

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in H. H. Hylton (ed.), *Aboriginal Self-Government in Canada:
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- “The Context of Delivery of Health Services to Status Indians and Inuit by Medical Services Branch,” Program Transfer and Policy Development, Medical Services Branch (Report), September 6, 1988.....VII, 15-25

Suggested Solutions:

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“The Treaty Right to Comprehensive Health Care,” *First Nations Health News*.....VII, 47-48

“Native Leaders Fear Results of Health Transfer,” *Wawatay News*, September 23, 1999.VII, 49

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Chapter Eight

ACCESS TO AND THE PRICING OF PRESCRIPTION DRUGS

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David Spurgeon, "Canada forced to honour Bayer's patent on ciprofloxacin" *BMJ* 2001;323:956(27 October).....VIII, 76

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Chapter Nine

REGULATING THE LOCATION, NUMBER AND INCOME OF DOCTORS

Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada*, Final Report, November 2002, Chapters 4 & 5, "Investing in Health Care Providers" and "Primary Health Care and Prevention".....IX, 1-45

The Senate, Standing Senate Committee on Social Affairs, Science and Technology, *The Health of Canadians – The Federal Role, Volume Six: Recommendations for Reform*, Chapter 4.....IX, 46-70

D. Orentlicher, "Paying Physicians More to Do Less: Financial Incentives to Limit Care" (1996) 30 University of Richmond Law Review 155.....IX, 71-104

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S. M. Hutton, "Physician Freedom of Contract in Ontario: An Economic Justification for the Ban on Extra-Billing with Some Recommendations for Structural Change" (1989) 47 *University of Toronto Law Review* (Supp.) 780

M.L. Barer and L. Wood, "Common Problems, Different Solutions: Learning from International Approaches to Improving Medical Services Access for Underserved Populations" (1997), 20:2 *Dalhousie Law Journal* 321

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Chapter Ten

HEALTH CARE REFORM: CLOSING HOSPITALS AND THE SHIFT TO HOME CARE

Colleen M. Flood, "Moving Medicare Home: The Forces Shifting Care Out of Hospitals and into Homes" in T. Caulfield & B von Tigerstrom (eds), *Health Reform & the Law in Canada: Meeting the Challenge*.....X, 1-14

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The Senate, Standing Senate Committee on Social Affairs, Science and Technology, *The Health of Canadians – The Federal Role, Volume Six: Recommendations for Reform*, Chapters 8 & 9.....X, 33-55

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J. Coutts, "Health-care cuts hit women hardest, economists told", *The Toronto Globe and Mail*, Monday, August 25, 1997, p. A5

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TO THE MARKET!: MANAGED CARE AND MANAGED COMPETITION

Robin Toner and Sheryl Gay Stolberg, "Decade After Health Care Crisis, Soaring Costs Bring New Strains" *The New York Times*, August 11, 2002.....XI, 1-16

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Lauren Randel et ors, "How Managed Care Can Be Ethical", (2001) 20: 4 *Health Affairs* 43—56.....XI, 57-70

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Michael T. Cahill & Peter D. Jacobson, "Pegram's Regress: A Missed Chance for Sensible Judicial Review of Managed Care Decisions" (2001) 27 *AM. J.L. & Med.* 421

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Chapter Twelve

CONTRACTING OUT TO PRIVATE FOR-PROFIT CLINICS AND INTERNAL MARKET REFORM

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- T. Arnold, "Colon screening available for \$1,000.00" April 24, 2002, National Post.....XII, 20-21
- T. Caulfield, C. M. Flood & B von Tigerstrom, "Comment: Bill 11, Health Care Protection Act" (2000) 9: 1 Health Law Review 22-27.....XII, 22-27
- J. L. Grand, "Competition, Cooperation, Or Control? Tales From the British National Health Service" (1999) 18: 3 Health Affairs 27.....XII, 28-34

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- Carolyn Hughes Tuohy, Colleen M. Flood, and Mark Stabile, "How Does Private Finance Affect Public Health Care Systems? Marshalling the Evidence from OECD Nations"(working paper submitted to the Jnl of Health Politics Policy and Law, April 2001)
- S. M. Hutton, "Physician Freedom of Contract in Ontario: An Economic Justification for the Ban on Extra-Billing with Some Recommendations for Structural Change" (1989) 47 University of Toronto Law Rev. (Supp.) 780.
- G. L. Stoddart, M. L. Barer. R. G. Evans, V. Bhatia, "Why Not User Charges? The Real Issues" The Premier's Council on Health, Well-being and Social Justice, September, 1993.
- C. M. Flood, "Will Supplementary Private Insurance Reduce Waiting Lists?" *Canadian Health Facilities Law Guide*, September, 1996.

